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AB-1292 Firearms. (2019-2020)

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Assembly Bill No. 1292

CHAPTER 110

An act to amend Sections 16960, 16990, 25570, 27920, and 31700 of, and to add Sections 26392, 26406, 26582, 26589, and 27922 to, the Penal Code, relating to firearms.

[Approved by Governor July 12, 2019. Filed with Secretary of State July 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1292, Bauer-Kahan. Firearms.

Existing law regulates the transfer of firearms, and allows some transfers to occur by operation of law, and specifies that a person taking title or possession of a firearm by operation of law includes, among others, the executor or administrator of an estate if the estate includes a firearm. Existing law generally requires the transfer of a firearm to be conducted by a firearms dealer if neither party to the transfer is a dealer. Existing law excepts executors and administrators of estates from that requirement if certain criteria are met. Existing law prohibits a resident of this state from importing, bringing, or transporting into this state, a firearm purchased or otherwise obtained from outside of this state unless the firearm is first delivered to a dealer in this state for delivery to the resident. Existing law excepts executors and administrators of estates from that prohibition if certain criteria are met. Existing law generally requires a person to possess a firearm safety certificate in order to possess a firearm. Existing law excepts executors and administrators of estates from that requirement.

This bill would specify that the transfer by operation of law provisions and the exceptions described above apply to a decedent's personal representative, a person acting pursuant to the person's power of attorney, a trustee, a conservator, a guardian or guardian ad litem, or a special administrator, as specified.

Existing law generally prohibits openly carrying a firearm and the carrying of a concealed firearm. Existing law exempts from the concealed carry prohibition a person who finds a firearm and is transporting it, as specified, to a law enforcement agency.

This bill would also exempt a person who finds a firearm and transports it under those circumstances from the open carrying of firearms prohibited. This bill would additionally exempt from these prohibitions the transportation to a law enforcement agency of a firearm that has been taken by a person from another person that is using the firearm to commit a crime against the person taking the firearm.

Existing law requires the transfer of a firearm to be conducted through a licensed dealer and requires the person receiving the firearm to possess a firearm safety certificate.

This bill would exempt those types of transfers to a law enforcement agency from the dealer requirement and the return of that firearm by the law enforcement agency from the safety certificate requirement, as specified.

The bill would make other conforming changes.

The bill would state that certain of its provisions are declaratory of existing law.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 16960 of the Penal Code is amended to read:

16960. As used in Article 1 (commencing with Section 26500) of Chapter 1 of Division 6 of Title 4, "operation of law" includes, but is not limited to, any of the following:

- (a) The executor, personal representative, or administrator of an estate, if the estate includes a firearm.
- (b) A secured creditor or an agent or employee of a secured creditor when a firearm is possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.
- (c) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.
- (d) A receiver performing the functions of a receiver, if the receivership estate includes a firearm.
- (e) A trustee in bankruptcy performing the duties of a trustee, if the bankruptcy estate includes a firearm.
- (f) An assignee for the benefit of creditors performing the functions of an assignee, if the assignment includes a firearm.
- (g) A transmutation of property between spouses pursuant to Section 850 of the Family Code.
- (h) A firearm received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.
- (i) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code.
- (j) The trustee of a trust that includes a firearm and that was part of a will that created the trust.
- (k) A person acting pursuant to the person's power of attorney in accordance with Division 4.5 (commencing with Section 4000) of the Probate Code.
- (l) A limited or general conservator appointed by a court pursuant to the Probate Code or Welfare and Institutions Code.
- (m) A guardian ad litem appointed by a court pursuant to Section 372 of the Code of Civil Procedure.
- (n) The trustee of a trust that includes a firearm that is under court supervision.
- (o) A special administrator appointed by a court pursuant to Section 8540 of the Probate Code.
- (p) A guardian appointed by a court pursuant to Section 1500 of the Probate Code.

SEC. 2. Section 16990 of the Penal Code is amended to read:

16990. As used in any provision listed in subdivision (a) of Section 16585, the phrase "a person taking title or possession of a firearm by operation of law" includes, but is not limited to, any of the following instances in which an individual receives title to, or possession of, a firearm:

- (a) The executor, personal representative, or administrator of an estate, if the estate includes a firearm.
- (b) A secured creditor or an agent or employee of a secured creditor when the firearm is possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.
- (c) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.
- (d) A receiver performing the functions of a receiver, if the receivership estate includes a firearm.
- (e) A trustee in bankruptcy performing the duties of a trustee, if the bankruptcy estate includes a firearm.
- (f) An assignee for the benefit of creditors performing the functions of an assignee, if the assignment includes a firearm.
- (g) A transmutation of property consisting of a firearm pursuant to Section 850 of the Family Code.

(h) A firearm passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(i) A firearm received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(j) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code.

(k) The trustee of a trust that includes a firearm and that was part of a will that created the trust.

(l) A firearm passed to a decedent's successor pursuant to Part 1 (commencing with Section 13000) of Division 8 of the Probate Code.

(m) A person acting pursuant to the person's power of attorney in accordance with Division 4.5 (commencing with Section 4000) of the Probate Code.

(n) A limited or general conservator appointed by a court pursuant to the Probate Code or Welfare and Institutions Code.

(o) A guardian ad litem appointed by a court pursuant to Section 372 of the Code of Civil Procedure.

(p) The trustee of a trust that includes a firearm that is under court supervision.

(q) The trustee of a trust that is not referenced in subdivisions (k) or (p).

(r) A special administrator appointed by a court pursuant to Section 8540 of the Probate Code.

(s) A guardian appointed by a court pursuant to Section 1500 of the Probate Code.

SEC. 3. Section 25570 of the Penal Code is amended to read:

25570. Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person who finds the firearm, if the person is transporting the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency.

(b) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

(c) The transportation of a firearm by a person who took the firearm from a person who was committing a crime against the person who took the firearm, and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

SEC. 4. Section 26392 is added to the Penal Code, to read:

26392. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) By a person who finds that handgun, if the person is transporting the handgun in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the handgun to the law enforcement agency.

(b) By a person who finds that handgun and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

(c) By a person who took the firearm from a person who was committing a crime against the person and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting that handgun to the law enforcement agency for disposition according to law.

SEC. 5. Section 26406 is added to the Penal Code, to read:

26406. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person who finds that firearm, if the person is carrying the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the handgun to the law enforcement agency.

(b) By a person who finds that handgun and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

(c) By a person who took the firearm from a person who was committing a crime against the person and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

SEC. 6. Section 26582 is added to the Penal Code, to read:

26582. Section 26500 does not apply to delivery or transfer of a firearm to a law enforcement agency made in accordance with Section 27922.

SEC. 7. Section 26589 is added to the Penal Code, to read:

26589. Section 26500 does not apply to the delivery or transfer of a firearm to a dealer by the trustee of a trust if the delivery or transfer satisfies both of the following conditions:

(a) The trust is not of the type described in either subdivision (k) or (p) of Section 16990.

(b) The trustee is acting within the course and scope of their duties as the trustee of that trust.

SEC. 8. Section 27920 of the Penal Code is amended to read:

27920. (a) Section 27545 does not apply to a person who takes title or possession of a firearm by operation of law if the person is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm and all of the following conditions are met:

(1) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subdivision (g), (h), (i), (j), (l), or (q) of Section 16990, the person shall, within 30 days of taking possession, submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question.

(2) If the person taking title or possession is receiving the firearm pursuant to subdivision (g), (h), (l), or (q) of Section 16990, the person shall do both of the following:

(A) Within 30 days of taking possession, submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question.

(B) Prior to taking title or possession of the firearm, the person shall obtain a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be presented.

(3) Where the person receiving title or possession of the firearm is a person described in subdivision (i) of Section 16990, on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted in AFS. An agency without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(4) Where the person receiving title or possession of the firearm is a person described in subdivision (j) of Section 16990, on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted in AFS. An agency without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver the firearm to the person referred to in this subdivision unless, prior to the delivery of the firearm, the person presents proof to the agency that the person is the holder of a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be presented.

(b) Subdivision (a) of Section 27585 does not apply to a person who imports a firearm into this state, brings a firearm into this state, or transports a firearm into this state if all of the following requirements are met:

(1) The person acquires ownership of the firearm as an executor, personal representative, or administrator of an estate, or as the trustee of a trust that includes a firearm and that was part of a will that created the trust.

(2) If acquisition of the firearm had occurred within this state, the receipt of the firearm by the executor, personal representative, trustee, or administrator would be exempt from the provisions of Section 27545 pursuant to paragraph (1) of subdivision (a).

(3) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question.

(4) If the executor, personal representative, trustee, or administrator subsequently acquires ownership of that firearm in an individual capacity, prior to transferring ownership to themselves, they shall obtain a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.

(5) The executor, personal representative, trustee, or administrator is 18 years of age or older.

(c) Subdivision (a) of Section 27585 does not apply to a person who imports a firearm into this state, brings a firearm into this state, or transports a firearm into this state if all of the following requirements are met:

(1) The person acquires ownership of the firearm by bequest or intestate succession as a surviving spouse or as the surviving registered domestic partner of the decedent who owned that firearm.

(2) If acquisition of the firearm had occurred within this state, the receipt of the firearm by the surviving spouse or registered domestic partner would be exempt from the provisions of Section 27545 pursuant to paragraph (2) of subdivision (a) by virtue of subdivision (h) of Section 16990.

(3) Within 30 days of taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question.

(4) The person has obtained a valid firearm safety certificate, except that in the case of a handgun, a valid unexpired handgun safety certificate may be used.

(d) Subdivision (a) of Section 27585 does not apply to a person who imports a firearm into this state, brings a firearm into this state, or transports a firearm into this state if all of the following requirements are met:

(1) The firearm is imported into this country pursuant to provisions of Section 925(a)(4) of Title 18 of the United States Code.

(2) The person is not subject to the requirements of Section 27560.

(3) The firearm is not a firearm that is prohibited by any provision listed in Section 16590.

(4) The firearm is not an assault weapon.

(5) The firearm is not a machinegun.

(6) The firearm is not a .50 BMG rifle.

(7) The firearm is not a destructive device.

(8) The person is 18 years of age or older.

(9) Within 30 days of that person taking possession of the firearm and importing, bringing, or transporting it into this state, the person shall submit a report to the Department of Justice, in a manner prescribed by the department, that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question.

(e) The reports that individuals complete pursuant to this section shall be made available to them in a format prescribed by the Department of Justice.

SEC. 9. Section 27922 is added to the Penal Code, to read:

27922. (a) Section 27545 does not apply to a person who takes possession of a firearm and subsequently delivers that firearm to a law enforcement agency if all of the following requirements are met:

(1) The person found the firearm or took the firearm from a person who was committing a crime against the person who took the firearm.

(2) The person taking possession of that firearm subsequently delivers the firearm to a law enforcement agency.

(3) The person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

(b) Except as provided in paragraph (4) of subdivision (a) of Section 27920, any firearms that are delivered to a law enforcement agency pursuant to this section that are not subject to the applicable provisions of Sections 18000, 18005, or 34000, shall, if the person has requested the firearm and is eligible to receive it, be returned to that person in accordance with Chapter 2 (commencing with Section 33850) of Division 11.

SEC. 10. Section 31700 of the Penal Code is amended to read:

31700. (a) The following persons, properly identified, are exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615:

(1) Any active or honorably retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Any active or honorably retired federal officer or law enforcement agent.

(3) Any reserve peace officer, as defined in Section 832.6.

(4) Any person who has successfully completed the course of training specified in Section 832.

(5) A firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, who is acting in the course and scope of that person's activities as a person licensed pursuant to Sections 26700 to 26915, inclusive.

(6) A federally licensed collector who is acquiring or being loaned a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, who has a current certificate of eligibility issued by the department pursuant to Section 26710.

(7) Except as provided in subdivision (d), a person to whom a firearm is being returned, where the person receiving the firearm is the owner of the firearm.

(8) A family member of a peace officer or deputy sheriff from a local agency who receives a firearm pursuant to Section 50081 of the Government Code.

(9) Any individual who has a valid concealed weapons permit issued pursuant to Chapter 4 (commencing with Section 26150) of Division 5.

(10) An active or honorably retired member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States, where individuals in those organizations are properly identified. For purposes of this section, proper identification includes the Armed Forces Identification Card or other written documentation certifying that the individual is an active or honorably retired member.

(11) Any person who is authorized to carry loaded firearms pursuant to Section 26025 or 26030.

(12) Persons who are the holders of a special weapons permit issued by the department pursuant to Section 32650 or 33300, pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4

(commencing with Section 32700) of Chapter 6 of this division.

(b) The following persons who take title or possession of a firearm by operation of law in a representative capacity, until or unless they transfer title ownership of the firearm to themselves in a personal capacity, are exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615:

- (1) The executor, personal representative, or administrator of an estate.
- (2) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.
- (3) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.
- (4) A receiver performing the functions of a receiver.
- (5) A trustee in bankruptcy performing the duties of a trustee.
- (6) An assignee for the benefit of creditors performing the functions of an assignee.
- (7) The trustee of a trust that includes a firearm and that as part of a will that created the trust.
- (8) A person acting pursuant to the person's power of attorney in accordance with Division 4.5 (commencing with Section 4000) of the Probate Code.
- (9) A limited or general conservator appointed by a court pursuant to the Probate Code or Welfare and Institutions Code.
- (10) A guardian ad litem appointed by a court pursuant to Section 372 of the Code of Civil Procedure.
- (11) The trustee of a trust that includes a firearm that is under court supervision.
- (12) A special administrator appointed by a court pursuant to Section 8540 of the Probate Code.
- (13) A guardian appointed by a court pursuant to Section 1500 of the Probate Code.

(c) A person, validly identified, who has been issued a valid hunting license that is unexpired or that was issued for the hunting season immediately preceding the calendar year in which the person takes title or possession of a firearm is exempt from the firearm safety certificate requirement in subdivision (a) of Section 31615, except as to handguns.

(d) A person who takes possession of a firearm and complies with Section 27922 by delivering the firearm to a law enforcement agency is exempted from the firearm safety certificate requirement in subdivision (a) of Section 31615. The exemption set forth in paragraph (7) of subdivision (a) shall not apply to the return of that firearm to that person, if the person has requested the firearm and is eligible to receive it.

SEC. 11. The Legislature finds and declares that the amendments made to law by Sections 1 and 2 of this act are declaratory of existing law.